IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Bail Appl..No. 6192 of 2007()

CMP.2842/2007 of J.M.F.C.-II,HOSDRUG
CRIME NO.396/07 OF BEKAL POLICE STATION

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PETITIONER/ACCUSED

ABOOBACKER HAJI, S/O. ABBAS, AGED 57,
CHERUMBA, AMARIYA HOUSE, OANAYAL VILLAGE.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: COMPLAINANT & STATE

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1. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. S.H.O.,
BEKAL POLICE STATION.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6192 OF 2007

Dated this the 11th day of October, 2007

ORDER

Application for regular bail. The petitioner faces allegations under the Kerala Abkari Act. The gravamen of the allegations against the petitioner is that he, along with the 2nd accused, allegedly an occupant of a building belonging to the petitioner, and another, was involved in objectionable culpable activity relating to transactions in arrack in a building belonging to him. Admittedly, that building belongs to the petitioner. Admittedly, it has been let out to the 2nd accused by the petitioner. The local people became suspicious as they found vehicles going into and coming out of the premises under suspicious circumstances in the night. On the night of 30/9/07, the local people restrained an Omni Van in which a large quantity of arrack in packets – 15000 packets each of

100 ml., were found concealed in bags. The local people had initially suspected that the premises was being used for some shady flesh trade. After the police came, it was realised that the Omni Van parked near the building belonging to the petitioner contained arrack in packets. The vehicle and the contents were seized. In the vehicle, there was a driving licence with photograph of the 2nd accused. The local people informed the police that this person (A2) along with the petitioner was seen visiting the premises frequently and under suspicious circumstances. After effecting seizure of the van and the contraband liquor in packets, the police party proceeded to the premises. There also a large quantity of spirit i.e., 350 litres and machineries for packing such liquor in plastic packets were seen by the police. They were seized. The police were informed that shortly prior to the arrival of the police, the petitioner along with the said second accused and another had fled from the premises through the back door. A neighbour – a woman, spoke to the police about this at the time of their visit itself. The petitioner was arrested on 1/10/07. He continues in custody from that date.

2. The learned counsel for the petitioner submits that the petitioner has absolutely no connection with the alleged

objectionable activity which was going on in the premises let out by him. He is a respectable person leading an honourable life in the locality. He has been unnecessarily dragged into the controversy. At the time of detection and arrest the petitioner was given the impression that the only crime committed by him was that his premises were used by the 2nd accused for the objectionable activity. It is only now that he learns that the police are attempting to make an allegation of collusion and involvement of the petitioner in the objectionable activity. The petitioner may, in these circumstances, be granted regular bail, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that the available indications do point to the culpable involvement of the petitioner. The learned Public Prosecutor in particular relies on the fact that the local persons had seen the petitioner making visits frequently and at odd hours to the premises along with the 2nd accused. It is unlikely that the petitioner would not have known about the activity going on in the premises - going by the nature of the recovery of contraband articles and machineries which were seized from the premises. The learned Public Prosecutor further submits that the next door neighbour – a

woman, had seen the petitioner along with two others fleeing from the premises shortly prior to the arrival of the police at the scene of the crime. Other witnesses have also seen the petitioner making frequent visits to the premises. The prosecution has a further allegation that in order to ensure that others do not perceive the objectionable activity in the premises, the compound walls of the premises were raised prior to the occurrence, after the 2nd accused came to occupy the premises.

4. At this early stage of investigation, this Court cannot and shall not resort to the exercise of weighing the materials in golden scales. That exercise will certainly have to be postponed to later stages. I must take note of the mandate of Sec.41A of the Abkari Act. Regular bail can be granted to the petitioner only if this Court in a position to entertain both the satisfactions contemplated under Sec.41A of the Abkari Act. I shall only say that at the moment and with the very available materials, I am unable to entertain either of those two satisfactions. Thus, I am satisfied that the objections of the learned Public Prosecutor are sustainable.

5. In the result, this bail application is dismissed. I may hasten to observe that the petitioner shall be at liberty to move this Court or the courts below for bail again at a later stage of

the investigation – not, at any rate, prior to 25/10/07. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge